

After Recording Return to:

City Clerk
City of North Bend
PO Box 896
North Bend, WA 98045

**LATECOMER REIMBURSEMENT AGREEMENT
FOR MUNICIPAL WATER SYSTEM EXTENSION COSTS**

Reference Number(s) of Related Documents: n/a

Grantor: City of North Bend, Washington

Grantee: Polygon Northwest Company

Legal Description:

Assessor's Property Tax Parcel/Account Numbers:

| Parcel No. | Property Owner at Time of Water Line Installation |
|------------------------|--|
| 1523089006, 1523089235 | Polygon Northwest Company - Cedar Falls Plat |
| 1523089102 | RAD DEVELOPMENT LLC - Si View Estates Plat |
| 1523089126 | Stevens, Maureen |
| 1523089008 | Stevens, Maureen T. |
| 1523089262 | Kester, Mary K. |

This AGREEMENT, made this ____ day of _____, 2013, is entered into by and between the CITY OF NORTH BEND, Washington, a noncharter optional municipal code city ("City"), and Polygon Northwest Company ("Developer").

WITNESSETH:

RECITALS

1. The City owns and operates a water system within and adjacent to its City limits; and
2. The Developer holds the fee simple interest to King County Parcel Numbers 1023089006 and 1523089235 located on the west side of Maloney Grove Ave. SE and south of SE Cedar Falls Way , North Bend, Washington, 98045 (“the Parcel”), which is within the City of North Bend’s water system service area; and
3. The Developer has constructed a certain extension to the City’s water system (“the Extension”), more particularly depicted on Exhibit “A”, attached hereto and incorporated herein by this reference, to serve the development on the Parcels, and said Extension is also capable of serving four (4) other parcels along Maloney Grove Ave. SE that are currently not connected to the City’s water system (“Benefited Properties”), which are more particularly depicted in Exhibit “C”; and
4. The Developer’s total project cost for the Extension amounts to \$101,968.260, as more specifically itemized in Exhibit “B,” attached hereto and incorporated herein by this reference; and
5. Pursuant to RCW 35.91.020 *et seq.*, the Municipal Water and Sewer Facilities Act, the City is authorized to reimburse the Developer for such fair pro rata share of the costs incurred for the Extension, subject to the provisions of this Latecomer Agreement, to be collected from the owner or owners of the Benefited Properties who tap on or connect to said Extension, which

fair pro rata share shall be the amounts shown in Exhibit “C,” attached hereto and incorporated herein by this reference; and

6. The Extension is located within the City’s existing water service area, and meets the City’s design and construction standards for water systems as set forth in Chapter 19.03 NBMC;

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereafter set forth, the parties agree as follows:

A. **Scope of Agreement.** This Agreement pertains to reimbursement of costs associated with the Extension, and the Benefited Properties that make use of the Extension. The parties adopt all of the recitals set forth above as material elements of this Agreement.

B. **Calculation of the Fair Pro Rata Share.** The Extension has a total construction cost of \$101,968.26, which shall be spread pro rata among the owners of the Benefited Properties based on both the front footage of each Benefited Property to be calculated as follows:

| Parcel No. | Property Owner at Time of Water Line Installation | Length of Frontage | Proportion of Frontage | Proportion of Improvement Costs |
|------------------------|---|--------------------|------------------------|---------------------------------|
| 1523089006, 1523089235 | Polygon Northwest Company - Cedar Falls Plat | 859 | 51.9% | 52,924.92 |
| 1523089102 | RAD DEVELOPMENT LLC - Si View Estates Plat | 327 | 19.8% | 20,147.20 |
| 1523089126 | Stevens, Maureen | 125 | 7.6% | 7,701.53 |
| 1523089008 | Stevens, Maureen | 141 | 8.5% | 8,687.33 |
| 1523089262 | Kester, Mary K. | 203 | 12.3% | 12,507.29 |
| Total | | 1655 | 100.0% | \$ 101,968.26 |

C. **Execution, Recording and Duration of Agreement.** This Agreement shall become operative upon its being recorded with the King County Auditor at the expense of the Developer, and shall remain in full force and effect for a period of Twenty (20) years after the

date of such recording, or until the Developer or its successors, or assigns, have been fully reimbursed, whichever event occurs earlier; provided, that in the event the Extension, or any portions thereof, be rendered useless during the term of this Agreement by the redesign or reconstruction of the Extension or the City's water system, as determined by and at the absolute discretion of the Public Works Director, then the City's obligation to collect latecomers' fees shall cease.

D. **Transfer of Title to the Extension.** The Developer shall transfer title, free and clear of all encumbrances, to the Extension by a Bill of Sale to be executed and delivered by the Developer to the City for ownership and maintenance by the City.

E. **Payments to Developer.** Subject to the Developer's prior approval, owners of Benefited Properties may negotiate with the Developer a plan for payment through the City of the latecomer's fee on an installment basis, provided the terms of such payment plan are reduced to writing and reasonably acceptable in the Developer's sole discretion. A copy of any such payment plan shall be forwarded to the City at the address set forth in Section J within thirty (30) days after execution thereof. In the absence of a payment plan negotiated with and approved in writing in advance by the Developer, the latecomer's fee shall be paid in full prior to tapping into, connecting to, or using the Extension in any manner whatsoever.

Upon the City's receipt of any funds in payment of a latecomer's fee, in whole or in part, the City shall forward such funds to the Developer at the address set forth in Section J within sixty (60) days after receipt thereof, less a ten percent (10%) administrative fee to be recovered by the City to defray the City's labor, bookkeeping and accounting costs associated with administering the terms of this Agreement. The City agrees not to allow an owner or owners of

Benefited Properties to tap into, connect to, or use the Extension without having first paid to the City the latecomer's fee (connection fee) as reimbursement to the Developer, and said ten percent (10%) administrative fee to defray the City's costs associated with administering this Agreement.

Should the City fail to forward the latecomer's fee to the Developer through the City's sole negligence, then the City shall pay the Developer interest on those monies at the rate paid by the Washington State Local Government Pool. However, should the Developer not keep the City informed of its current correct mailing address, or should the Developer otherwise be negligent and thus contribute to the failure of the City to forward the latecomer's fee, then no interest shall accrue on late payment of the latecomer's fee. If any payment is returned to the City unclaimed by the Developer, and the City is unable to locate the Developer after a good faith attempt, the latecomer's fee shall be placed in a separate fund for two years. At any time within the two-year period, the Developer may receive the latecomer's fee, without interest, by applying to the City for that latecomer's fee. After the expiration of the two-year period, all rights of the Developer to that fee shall expire, and the City shall be deemed to be the owner of those funds.

When funds are received for a latecomer's fee, the City shall make an entry into the City's file for the Benefited Property within thirty (30) days of receipt of the funds. An individual certificate of payment will not be recorded with King County. The City will record a certificate of payment and release of assessment for the entire Benefited Area when all owners of Benefited Properties have paid their assessment.

F. **Warranty.** The Developer warrants that it is the owner in title absolute of the Extension, that it has neither permitted nor suffered any person or other entity to tap into the

Extension prior to the date of this Agreement without the City's knowledge, and there are no persons, firms or corporations who have filed or have the right to file a lien against the Extension pursuant to the provisions of Title 60 RCW, other than those heretofore filed that have been satisfied. In the event that any lien or other claim against the Extension is asserted after conveyance to the City, the Developer shall defend, hold harmless, and indemnify the City from loss on account thereof. In the event the City shall be put to any expense in defense of such claim or otherwise, then the City shall have a lien against any amounts then or thereafter deposited with it pursuant to this Agreement.

G. **City's Obligations and Rights Upon Assignment.** In the event of the assignment or transfer of the rights of the Developer voluntarily, involuntarily, or by operation of law, then the City shall pay all benefits accruing hereunder, after notice, to such successor of the Developer as the City, in its sole judgment, deems entitled to such benefits; and in the event conflicting demands are made upon the City for benefits accruing under this Agreement, then the City may, at its option, commence an action in interpleader and join any party claiming rights under this Agreement or other parties which the City believes to be necessary or proper, and the City shall be discharged from further liability upon paying the person or person whom any court having jurisdiction of such interpleader action shall determine, and in such action the amount of such liability shall constitute a lien in favor of the City upon all funds accrued or accruing pursuant to this Agreement.

H. **Indemnification.** In the event any claims arise from this Agreement as a result of the negligent acts or omissions of the City, its officers, officials, employees representatives and agents, the Developer hereby agrees to release, indemnify, defend and hold the City, its officers,

officials, employees, agents and representatives, harmless from any and all claims, costs judgments, awards or liabilities to any person, to the extent allowed by law.

The City shall be entitled to rely with acquittance on the provisions of this Agreement with respect to the fairness of the pro rata charges, and upon the determination of the Benefited Properties as provided herein. The Developer agrees to indemnify, hold harmless and defend the City in any challenge to the method used to calculate the fair pro rata share applied to the Benefited Properties as set forth in this Agreement.

I. **City's Right to Regulate Its Water System.** Nothing contained herein shall be construed to affect or impair the right of the City to regulate the use of its water system, of which the Extension shall become a part under the terms of this Agreement, pursuant to the provisions of any ordinance, resolution, or policy now or hereafter in effect. The imposition by the City of any such requirement shall not be deemed an impairment of this Agreement though it may be imposed in such a manner as to refuse service to an owner or owners of Benefited Properties in order to secure compliance with any such requirement of the City.

J. **Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary.

City Clerk
City of North Bend
PO Box 896
North Bend, WA 98045

Polygon Northwest Company (Developer)
Richard Rawlings, Development Manager
11624 SE 5th Street, Suite 200
Bellevue, WA 98005

K. **Jurisdiction, Venue, and Enforcement Expenses.** This Agreement shall be construed in accordance with the laws of the State of Washington, and jurisdiction of any resulting dispute shall be in King County Superior Court, King County, Washington. The

prevailing party in any legal action arising from this Agreement shall be entitled to all costs and expenses, including attorneys' fees, expert witness fees or other witness fees, and any such fees and expenses incurred on appeal.

L. **Severability.** Any invalidity, in whole or in part, of any of the provisions of this Agreement shall not affect the validity of any other of its provisions.

M. **Enforcement – City Not Responsible.** By instituting the Latecomer's Agreement, the City does not agree to assume any responsibility to enforce the Agreement. The final latecomer agreement recorded with King County will be a matter of public record and will serve as a notice to the owners or purchasers of the Benefited Properties. The Developer has responsibility to monitor those parties connecting to the Extension. Should the City become aware of such a connection, it will use its best efforts to collect the latecomer's fee, but shall not incur any liability should it inadvertently fail to collect the latecomer's fee.

N. **No Waiver.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Developer.

[THIS PART INTENTIONALLY LEFT BLANK]

O. **Entire Agreement.** This Agreement, including its exhibits and all documents referenced herein, constitutes the entire agreement between the City and the Developer, and supersedes all proposals, oral or written, between the parties on the subject.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

CITY OF NORTH BEND

DEVELOPER

By: _____
Ken Hearing, Mayor

Print name: _____

Title: _____

ATTEST

City Clerk, Susie Oppedal

APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY

Mike Kenyon

EXHIBIT "A"

Map of System Extension Area

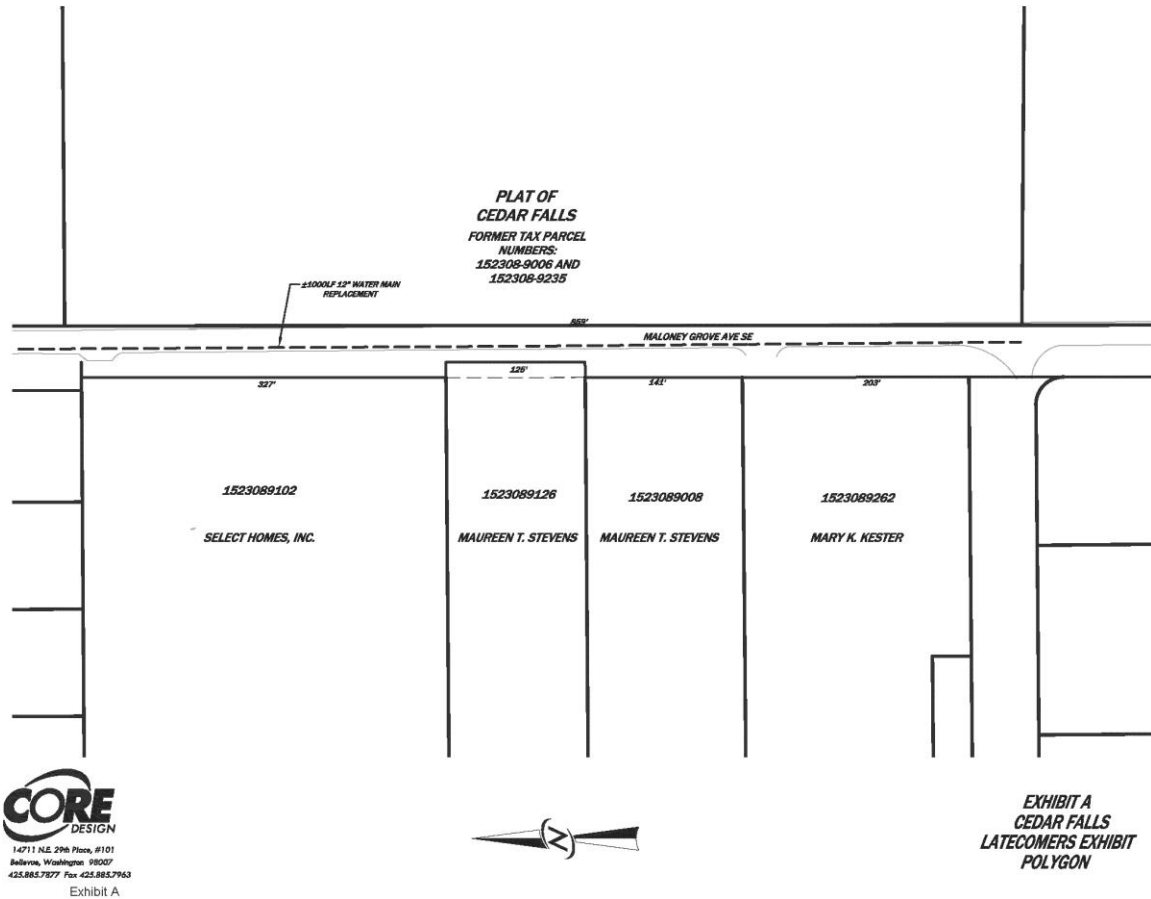


EXHIBIT "B"

Itemized Construction Costs

EXHIBIT B ITEMIZED COSTS

Construction Costs

| | | |
|---|-----------|------------------|
| Cut and demo existing pavement and water line | \$ | 16,782.00 |
| 12" Water main installation and tie-ins | \$ | 53,480.00 |
| 12" butterfly valves | \$ | 3,953.00 |
| Asphalt Patching | \$ | 7,074.00 |
| Traffic Control | \$ | 5,440.00 |
| Sub-total | \$ | 86,729.00 |
| Sales Tax | \$ | 8,239.26 |
| Total | \$ | 94,968.26 |

Design and Survey

| | | |
|--|-----------|-----------------|
| Water main design | \$ | 5,000.00 |
| Survey staking for water main installation | \$ | 2,000.00 |
| Total | \$ | 7,000.00 |

Total Cost of water main replacement \$ **101,968.26**

NORTH BEND DEVELOPMENT CONTRACT

| JOB | LINE | DESCRIPTION OF WORK | SCHEDULED VALUE |
|-------|--|--|--------------------------|
| 32799 | 41 STORM S- 12" SD PIPE INSTALLED | 300250000 STORM S- 12" SD PIPE INSTALLED | \$19,008.00 |
| 32799 | 42 STORM S- TYPE #1 CB | 300250000 STORM S- TYPE #1 CB | \$7,000.00 |
| 32799 | 43 STORM S- YARD DRAINS | 300250000 STORM S- YARD DRAINS | \$4,200.00 |
| 32799 | 44 STORM S- CONNECT TO EXISTING | 300250000 STORM S- CONNECT TO EXISTING | \$1,000.00 |
| 32799 | 45 STORM S- RAISE IRON @ ATB & B | 300250000 STORM S- RAISE IRON @ ATB & B | \$3,000.00 |
| 32799 | 46 STORM S- INFILTRATION TRENCH | 300250000 STORM S- INFILTRATION TRENCH | \$4,040.00 |
| 32799 | 47 STORM S- DRYWELLS, \$1000 EA. | 300250000 STORM S- DRYWELLS, \$1000 EA. | \$73,000.00 |
| 32799 | 48 SANITARY S- 6" SS PIPE INSTALL | 300255000 SANITARY S- 6" SS PIPE INSTALL | \$37,994.00 |
| 32799 | 49 SANITARY S- 8" SS PIPE INSTALL | 300255000 SANITARY S- 8" SS PIPE INSTALL | \$80,080.00 |
| 32799 | 50 SANITARY S- CLEANOUTS | 300255000 SANITARY S- CLEANOUTS | \$250.00 |
| 32799 | 51 SANITARY S- SANITARY MANHOLES | 300255000 SANITARY S- SANITARY MANHOLES | \$44,000.00 |
| 32799 | 52 SANITARY S- CONNECT TO EXISTIN | 300255000 SANITARY S- CONNECT TO EXISTIN | \$2,000.00 |
| 32799 | 53 SANITARY S- TEST/CLEAN/F. ADJ | 300255000 SANITARY S- TEST/CLEAN/F. ADJ | \$3,000.00 |
| 32799 | 54 SANITARY S- RAISE IRON @ ATB | 300255000 SANITARY S- RAISE IRON @ ATB | \$11,000.00 |
| 32799 | 55 FINE GRADE- F.G. COMMON L/SCAP | 300222000 FINE GRADE- F.G. COMMON L/SCAP | \$3,500.00 |
| 32799 | 56 FINE GRADE- F.G. PARK | 300222000 FINE GRADE- F.G. PARK | \$4,750.00 |
| 32799 | 57 RET WALLS- UNREINFORCED ROCKER | 300289000 RET WALLS- UNREINFORCED ROCKER | \$15,419.80 |
| 32799 | 58 FRNT IMPROV- CUT & DEMO | 301645000 FRNT IMPROV- CUT & DEMO | \$22,376.25 75% water |

Contractor_____

30

Subcontractor_____

\$ 16,782.00

NORTH BEND DEVELOPMENT CONTRACT

| JOB | LINE | DESCRIPTION OF WORK | SCHEDULED VALUE |
|-------|---|--|------------------------------|
| 32799 | 59 FRNT IMPROV- 6" CRUSHED ROCK | 301645000 FRNT IMPROV- 6" CRUSHED ROCK | \$1,087.50 |
| 32799 | 60 FRNT IMPROV- 1.5" WATER SERVIC | 301645000 FRNT IMPROV- 1.5" WATER SERVIC | \$2,000.00 |
| 32799 | 61 FRNT IMPROV- 12" SD PIPE INSTL | 301645000 FRNT IMPROV- 12" SD PIPE INSTL | \$10,890.00 |
| 32799 | 62 FRNT IMPROV- SEWER EXT & ADJ | 301645000 FRNT IMPROV- SEWER EXT & ADJ | \$8,394.00 |
| 32799 | 63 FRNT IMPROV- WATER EXT/TIE INS | 301645000 FRNT IMPROV- WATER EXT/TIE INS | \$66,852.00 (2) |
| 32799 | 64 FRNT IMPROV- SIDEWALK | 301645000 FRNT IMPROV- SIDEWALK | \$9,670.50 30% Mainwater |
| 32799 | 65 FRNT IMPROV- CURB & GUTTER | 301645000 FRNT IMPROV- CURB & GUTTER | \$7,088.30 |
| 32799 | 66 FRNT IMPROV- TRAFFIC CONTROL | 301645000 FRNT IMPROV- TRAFFIC CONTROL | \$10,880.00 (1) 50% water |

① \$15,440

② \$53,480

Contractor_____

31

Subcontractor_____

PROJECT: CEDAR FALLS WAY, L.L.C.
CODE: 2555 12" BUTTERFLY VALVES
DATED: September 19, 2011

PHASE: 30
CONTRACT # 32799.30
VENDOR #: 11157

CONTRACT CHANGE ORDER

Subcontractor:

JIM HENRICKS
BDZ CONSTRUCTION
3207 PACIFIC AVE

EVERETT, WA. 98201

\$3,953

The contract for CEDAR FALLS WAY, L.L.C. is hereby modified as follows:

Change Order # 32799.30-8

| Cost Code | Description | Amount |
|-----------|--|------------|
| 2555 | 12" BUTTERFLY VALVES FOR OFFSITE WATER MAIN | \$3,953.00 |
| 2555 | 8" GATE VALVES (ALL CHANGED TO 3-WAY VALVES) | \$9,600.00 |

| | |
|-----------------------------------|----------------|
| Total amount of this change: | \$13,553.00 |
| Amount of previous change orders: | \$17,684.35 |
| Original contract amount: | \$1,221,894.00 |
| New contract amount: | \$1,253,132.00 |

+WSST

The enclosed Exhibit "B" Phase 30 is to be used for all invoicing for the referenced units.

The SUBCONTRACTOR shall be responsible for monitoring and adhering to the construction schedule as published at <http://schedule.polygonhomes.com> on the web.

All other terms and conditions in your current contract 32799.30 shall apply to this change order.

Facsimile transmission of any signed original document, and re-transmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, the parties will confirm facsimile transmitted signatures by signing an original document.

Acknowledged:

CONTRACTOR
CEDAR FALLS WAY, L.L.C.'S
Authorized Agent

SUBCONTRACTOR
BDZ CONSTRUCTION's
Authorized Agent

By: _____
Ron Bowen
Project Manager

By: _____
JIM HENRICKS
Its

PROJECT: CEDAR FALLS WAY, L.L.C.
CODE: 16410 PETROMAT FABRIC
DATED: May 25, 2012

PHASE: 30
CONTRACT # 32799.30
VENDOR #: 10375

CONTRACT CHANGE ORDER

Subcontractor:
KEITH NEWTON
LAKERIDGE PAVING CO. LLC
PO BOX 8500
COVINGTON, WA 98042-8500

67,074.00

The contract for CEDAR FALLS WAY, L.L.C. is hereby modified as follows:

Change Order # 32799.30-3

| Cost Code | Description | Amount |
|-----------|------------------|-------------|
| 16410 | PETROMAT FABRIC | \$9,075.00 |
| 16410 | ASPHALT PRELEVEL | \$61,286.40 |
| 16410 | ASPHALT PATCHING | \$7,074.00 |

Total amount of this change: \$77,435.40
Amount of previous change orders: \$44,380.00
Original contract amount: \$277,458.00
New contract amount: \$399,273.40

+WSST

The enclosed Exhibit "B" Phase 30 is to be used for all invoicing for the referenced units.

The SUBCONTRACTOR shall be responsible for monitoring and adhering to the construction schedule as published at <http://schedule.polygonhomes.com> on the web.

All other terms and conditions in your current contract 32799.30 shall apply to this change order.

Facsimile transmission of any signed original document, and re-transmission of any signed facsimile transmission, shall be the same as delivery of an original. At the request of either party, the parties will confirm facsimile transmitted signatures by signing an original document.

Acknowledged:

CONTRACTOR
CEDAR FALLS WAY, L.L.C.'S
Authorized Agent

SUBCONTRACTOR
LAKERIDGE PAVING CO. LLC's
Authorized Agent

By: _____
Nick Lund
Purchasing Agent

By: _____
KEITH NEWTON
Its

August 16, 2010
Core No. 07093P

Mr. Richard Rawlings
Polygon Northwest
11624 SE 5th St. Suite 200
Bellevue, WA 98009

**Subject: Cedar Falls
North Bend, WA**

Dear Richard:

Thank you for the opportunity to provide this proposal for professional planning, engineering, and surveying services for the Cedar Falls Parcel in North Bend. We understand that you intend to develop the property with approximately 142 single family lots.

The scope of work and estimated fees are as follows:

| Scope of Work | Fee |
|---|---------|
| <u>Frontage Improvements on 424th Avenue SE:</u> | |
| a) <u>Water System Improvement Plans</u> – Core will prepare water improvement plans for the frontage on 424 th Ave SE. General notes, profiles and details will be prepared in support of the plans. | \$5,000 |
| b) <u>Construction Staking for Water improvements</u> – Core will tight stake domestic waterline at bends, elbows, tees, fire hydrants and at 50 foot stations. A single lath will be set at each point of and two hubs and accompanying lath will be set at 10- and 15-foot offsets. Asbuilt location will also be determined as part of this task.. | \$2,000 |

If the above proposal is acceptable, please sign the following authorization and return one copy to our office. Thank you for the opportunity to provide this proposal for professional services for the Cedar Falls Property.

Sincerely,
CORE DESIGN, INC.

Gary R. Sharnbroich, P.E.
Principal/Senior Project Manager

Authorization:

I have read and fully understand this Agreement and the General Terms and Provisions attached hereto and hereby authorize Core Design, Inc. to proceed with the work outlined in accordance with the terms of this Agreement for Professional Services.

| | |
|---------------------------------------|----------------------------|
| Approved for CORE DESIGN, INC. | Approved for Client |
| By: _____ | By: _____ |
| Title: _____ | Title: _____ |
| Date: _____ | Date: _____ |

EXHIBIT “C”

Benefited Properties
Pro-Rata Share

| Parcel No. | Property Owner at Time of Water Line Installation | Length of Frontage | Proportion of Frontage | Proportion of Improvement Costs |
|---|---|--------------------|------------------------|---------------------------------|
| Cedar Falls Plat (Formerly Parcel ID No. 1523089006 & 1523089235 | Polygon Northwest Company - Cedar Falls Plat | 859 | 51.9% | 52,924.92 |
| 1523089102-Si View Estates | RAD DEVELOPMENT LLC - Select Homes, Inc, Si View Estates Plat | 327 | 19.8% | 20,147.20 |
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| Total | | 1,655 | 100.0% | \$ 101,968.26 |